

AMENDED IN ASSEMBLY JANUARY 6, 2014

AMENDED IN ASSEMBLY APRIL 11, 2013

AMENDED IN ASSEMBLY MARCH 14, 2013

CALIFORNIA LEGISLATURE—2013–14 REGULAR SESSION

## ASSEMBLY BILL

**No. 579**

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**Introduced by Assembly Member Melendez**

February 20, 2013

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An act to ~~add Section 801.3 to~~ *amend Section 1170* the Penal Code, relating to ~~sex offenses~~ *mandatory supervision*.

### LEGISLATIVE COUNSEL'S DIGEST

AB 579, as amended, Melendez. ~~Sex offenses against children. Mandatory supervision.~~

*Existing law authorizes a court, when sentencing a person to county jail for a felony, to commit the person to county jail for either the full term in custody, as specified, or to suspend the execution of a concluding portion of the term selected at the court's discretion. Under existing law, this period of suspended execution is supervised by the county probation officer and is known as mandatory supervision.*

*This bill would specify that mandatory supervision begins upon release from custody.*

~~Existing law generally requires that prosecution for a felony be commenced within 3 years, and if that felony is punishable by imprisonment for 8 years or more, generally be commenced within 6 years. Existing law provides that a prosecution for a felony offense for certain sex offenses against a minor may be commenced any time prior to the victim's 28th birthday or within 10 years after commission of the offense, as specified.~~

~~This bill would provide that, except as specified, a prosecution may be commenced at any time prior to the victim's 28th birthday, or within the period and under the circumstances specified under other provisions of law, if applicable, whichever occurs later, for any violation of specified criminal offenses, including harboring a principal to a felony, intimidating a witness, and conspiring to obstruct justice, if those offenses relate to a violation of various sex offenses, including rape and sodomy, in which the victim was a minor and the violation involved substantial sexual conduct. The bill would also define the term "victim" for purposes of these provisions.~~

Vote: majority. Appropriation: no. Fiscal committee: no.  
State-mandated local program: no.

*The people of the State of California do enact as follows:*

1     *SECTION 1. Section 1170 of the Penal Code, as amended by*  
2     *Section 5 of Chapter 508 of the Statutes of 2013, is amended to*  
3     *read:*

4     1170. (a) (1) The Legislature finds and declares that the  
5     purpose of imprisonment for crime is punishment. This purpose  
6     is best served by terms proportionate to the seriousness of the  
7     offense with provision for uniformity in the sentences of offenders  
8     committing the same offense under similar circumstances. The  
9     Legislature further finds and declares that the elimination of  
10    disparity and the provision of uniformity of sentences can best be  
11    achieved by determinate sentences fixed by statute in proportion  
12    to the seriousness of the offense as determined by the Legislature  
13    to be imposed by the court with specified discretion.

14    (2) Notwithstanding paragraph (1), the Legislature further finds  
15    and declares that programs should be available for inmates,  
16    including, but not limited to, educational programs, that are  
17    designed to prepare nonviolent felony offenders for successful  
18    reentry into the community. The Legislature encourages the  
19    development of policies and programs designed to educate and  
20    rehabilitate nonviolent felony offenders. In implementing this  
21    section, the Department of Corrections and Rehabilitation is  
22    encouraged to give priority enrollment in programs to promote  
23    successful return to the community to an inmate with a short  
24    remaining term of commitment and a release date that would allow  
25    him or her adequate time to complete the program.

(3) In any case in which the punishment prescribed by statute for a person convicted of a public offense is a term of imprisonment in the state prison of any specification of three time periods, the court shall sentence the defendant to one of the terms of imprisonment specified unless the convicted person is given any other disposition provided by law, including a fine, jail, probation, or the suspension of imposition or execution of sentence or is sentenced pursuant to subdivision (b) of Section 1168 because he or she had committed his or her crime prior to July 1, 1977. In sentencing the convicted person, the court shall apply the sentencing rules of the Judicial Council. The court, unless it determines that there are circumstances in mitigation of the punishment prescribed, shall also impose any other term that it is required by law to impose as an additional term. Nothing in this article shall affect any provision of law that imposes the death penalty, that authorizes or restricts the granting of probation or suspending the execution or imposition of sentence, or expressly provides for imprisonment in the state prison for life, except as provided in paragraph (2) of subdivision (d). In any case in which the amount of preimprisonment credit under Section 2900.5 or any other provision of law is equal to or exceeds any sentence imposed pursuant to this chapter, the entire sentence shall be deemed to have been served and the defendant shall not be actually delivered to the custody of the secretary. The court shall advise the defendant that he or she shall serve a period of parole and order the defendant to report to the parole office closest to the defendant's last legal residence, unless the in-custody credits equal the total sentence, including both confinement time and the period of parole. The sentence shall be deemed a separate prior prison term under Section 667.5, and a copy of the judgment and other necessary documentation shall be forwarded to the secretary.

(b) When a judgment of imprisonment is to be imposed and the statute specifies three possible terms, the choice of the appropriate term shall rest within the sound discretion of the court. At least four days prior to the time set for imposition of judgment, either party or the victim, or the family of the victim if the victim is deceased, may submit a statement in aggravation or mitigation. In determining the appropriate term, the court may consider the record in the case, the probation officer's report, other reports, including reports received pursuant to Section 1203.03, and statements in

1 aggravation or mitigation submitted by the prosecution, the  
2 defendant, or the victim, or the family of the victim if the victim  
3 is deceased, and any further evidence introduced at the sentencing  
4 hearing. The court shall select the term which, in the court's  
5 discretion, best serves the interests of justice. The court shall set  
6 forth on the record the reasons for imposing the term selected and  
7 the court may not impose an upper term by using the fact of any  
8 enhancement upon which sentence is imposed under any provision  
9 of law. A term of imprisonment shall not be specified if imposition  
10 of sentence is suspended.

11 (c) The court shall state the reasons for its sentence choice on  
12 the record at the time of sentencing. The court shall also inform  
13 the defendant that as part of the sentence after expiration of the  
14 term he or she may be on parole for a period as provided in Section  
15 3000.

16 (d) (1) When a defendant subject to this section or subdivision  
17 (b) of Section 1168 has been sentenced to be imprisoned in the  
18 state prison and has been committed to the custody of the secretary,  
19 the court may, within 120 days of the date of commitment on its  
20 own motion, or at any time upon the recommendation of the  
21 secretary or the Board of Parole Hearings, recall the sentence and  
22 commitment previously ordered and resentence the defendant in  
23 the same manner as if he or she had not previously been sentenced,  
24 provided the new sentence, if any, is no greater than the initial  
25 sentence. The court resentencing under this subdivision shall apply  
26 the sentencing rules of the Judicial Council so as to eliminate  
27 disparity of sentences and to promote uniformity of sentencing.  
28 Credit shall be given for time served.

29 (2) (A) (i) When a defendant who was under 18 years of age  
30 at the time of the commission of the offense for which the  
31 defendant was sentenced to imprisonment for life without the  
32 possibility of parole has served at least 15 years of that sentence,  
33 the defendant may submit to the sentencing court a petition for  
34 recall and resentencing.

35 (ii) Notwithstanding clause (i), this paragraph shall not apply  
36 to defendants sentenced to life without parole for an offense where  
37 the defendant tortured, as described in Section 206, his or her  
38 victim or the victim was a public safety official, including any law  
39 enforcement personnel mentioned in Chapter 4.5 (commencing  
40 with Section 830) of Title 3, or any firefighter as described in

1 Section 245.1, as well as any other officer in any segment of law  
2 enforcement who is employed by the federal government, the state,  
3 or any of its political subdivisions.

4 (B) The defendant shall file the original petition with the  
5 sentencing court. A copy of the petition shall be served on the  
6 agency that prosecuted the case. The petition shall include the  
7 defendant's statement that he or she was under 18 years of age at  
8 the time of the crime and was sentenced to life in prison without  
9 the possibility of parole, the defendant's statement describing his  
10 or her remorse and work towards rehabilitation, and the defendant's  
11 statement that one of the following is true:

12 (i) The defendant was convicted pursuant to felony murder or  
13 aiding and abetting murder provisions of law.

14 (ii) The defendant does not have juvenile felony adjudications  
15 for assault or other felony crimes with a significant potential for  
16 personal harm to victims prior to the offense for which the sentence  
17 is being considered for recall.

18 (iii) The defendant committed the offense with at least one adult  
19 codefendant.

20 (iv) The defendant has performed acts that tend to indicate  
21 rehabilitation or the potential for rehabilitation, including, but not  
22 limited to, availing himself or herself of rehabilitative, educational,  
23 or vocational programs, if those programs have been available at  
24 his or her classification level and facility, using self-study for  
25 self-improvement, or showing evidence of remorse.

26 (C) If any of the information required in subparagraph (B) is  
27 missing from the petition, or if proof of service on the prosecuting  
28 agency is not provided, the court shall return the petition to the  
29 defendant and advise the defendant that the matter cannot be  
30 considered without the missing information.

31 (D) A reply to the petition, if any, shall be filed with the court  
32 within 60 days of the date on which the prosecuting agency was  
33 served with the petition, unless a continuance is granted for good  
34 cause.

35 (E) If the court finds by a preponderance of the evidence that  
36 the statements in the petition are true, the court shall hold a hearing  
37 to consider whether to recall the sentence and commitment  
38 previously ordered and to resentence the defendant in the same  
39 manner as if the defendant had not previously been sentenced,  
40 provided that the new sentence, if any, is not greater than the initial

1 sentence. Victims, or victim family members if the victim is  
2 deceased, shall retain the rights to participate in the hearing.

3 (F) The factors that the court may consider when determining  
4 whether to recall and resentence include, but are not limited to,  
5 the following:

6 (i) The defendant was convicted pursuant to felony murder or  
7 aiding and abetting murder provisions of law.

8 (ii) The defendant does not have juvenile felony adjudications  
9 for assault or other felony crimes with a significant potential for  
10 personal harm to victims prior to the offense for which the sentence  
11 is being considered for recall.

12 (iii) The defendant committed the offense with at least one adult  
13 codefendant.

14 (iv) Prior to the offense for which the sentence is being  
15 considered for recall, the defendant had insufficient adult support  
16 or supervision and had suffered from psychological or physical  
17 trauma, or significant stress.

18 (v) The defendant suffers from cognitive limitations due to  
19 mental illness, developmental disabilities, or other factors that did  
20 not constitute a defense, but influenced the defendant's  
21 involvement in the offense.

22 (vi) The defendant has performed acts that tend to indicate  
23 rehabilitation or the potential for rehabilitation, including, but not  
24 limited to, availing himself or herself of rehabilitative, educational,  
25 or vocational programs, if those programs have been available at  
26 his or her classification level and facility, using self-study for  
27 self-improvement, or showing evidence of remorse.

28 (vii) The defendant has maintained family ties or connections  
29 with others through letter writing, calls, or visits, or has eliminated  
30 contact with individuals outside of prison who are currently  
31 involved with crime.

32 (viii) The defendant has had no disciplinary actions for violent  
33 activities in the last five years in which the defendant was  
34 determined to be the aggressor.

35 (G) The court shall have the discretion to recall the sentence  
36 and commitment previously ordered and to resentence the  
37 defendant in the same manner as if the defendant had not  
38 previously been sentenced, provided that the new sentence, if any,  
39 is not greater than the initial sentence. The discretion of the court  
40 shall be exercised in consideration of the criteria in subparagraph

1 (B). Victims, or victim family members if the victim is deceased,  
2 shall be notified of the resentencing hearing and shall retain their  
3 rights to participate in the hearing.

4 (H) If the sentence is not recalled, the defendant may submit  
5 another petition for recall and resentencing to the sentencing court  
6 when the defendant has been committed to the custody of the  
7 department for at least 20 years. If recall and resentencing is not  
8 granted under that petition, the defendant may file another petition  
9 after having served 24 years. The final petition may be submitted,  
10 and the response to that petition shall be determined, during the  
11 25th year of the defendant's sentence.

12 (I) In addition to the criteria in subparagraph (F), the court may  
13 consider any other criteria that the court deems relevant to its  
14 decision, so long as the court identifies them on the record,  
15 provides a statement of reasons for adopting them, and states why  
16 the defendant does or does not satisfy the criteria.

17 (J) This subdivision shall have retroactive application.

18 (e) (1) Notwithstanding any other law and consistent with  
19 paragraph (1) of subdivision (a), if the secretary or the Board of  
20 Parole Hearings or both determine that a prisoner satisfies the  
21 criteria set forth in paragraph (2), the secretary or the board may  
22 recommend to the court that the prisoner's sentence be recalled.

23 (2) The court shall have the discretion to resentence or recall if  
24 the court finds that the facts described in subparagraphs (A) and  
25 (B) or subparagraphs (B) and (C) exist:

26 (A) The prisoner is terminally ill with an incurable condition  
27 caused by an illness or disease that would produce death within  
28 six months, as determined by a physician employed by the  
29 department.

30 (B) The conditions under which the prisoner would be released  
31 or receive treatment do not pose a threat to public safety.

32 (C) The prisoner is permanently medically incapacitated with  
33 a medical condition that renders him or her permanently unable  
34 to perform activities of basic daily living, and results in the prisoner  
35 requiring 24-hour total care, including, but not limited to, coma,  
36 persistent vegetative state, brain death, ventilator-dependency, loss  
37 of control of muscular or neurological function, and that  
38 incapacitation did not exist at the time of the original sentencing.

39 The Board of Parole Hearings shall make findings pursuant to  
40 this subdivision before making a recommendation for resentence

1 or recall to the court. This subdivision does not apply to a prisoner  
2 sentenced to death or a term of life without the possibility of parole.

3 (3) Within 10 days of receipt of a positive recommendation by  
4 the secretary or the board, the court shall hold a hearing to consider  
5 whether the prisoner's sentence should be recalled.

6 (4) Any physician employed by the department who determines  
7 that a prisoner has six months or less to live shall notify the chief  
8 medical officer of the prognosis. If the chief medical officer  
9 concurs with the prognosis, he or she shall notify the warden.  
10 Within 48 hours of receiving notification, the warden or the  
11 warden's representative shall notify the prisoner of the recall and  
12 resentencing procedures, and shall arrange for the prisoner to  
13 designate a family member or other outside agent to be notified  
14 as to the prisoner's medical condition and prognosis, and as to the  
15 recall and resentencing procedures. If the inmate is deemed  
16 mentally unfit, the warden or the warden's representative shall  
17 contact the inmate's emergency contact and provide the information  
18 described in paragraph (2).

19 (5) The warden or the warden's representative shall provide the  
20 prisoner and his or her family member, agent, or emergency  
21 contact, as described in paragraph (4), updated information  
22 throughout the recall and resentencing process with regard to the  
23 prisoner's medical condition and the status of the prisoner's recall  
24 and resentencing proceedings.

25 (6) Notwithstanding any other provisions of this section, the  
26 prisoner or his or her family member or designee may  
27 independently request consideration for recall and resentencing  
28 by contacting the chief medical officer at the prison or the  
29 secretary. Upon receipt of the request, the chief medical officer  
30 and the warden or the warden's representative shall follow the  
31 procedures described in paragraph (4). If the secretary determines  
32 that the prisoner satisfies the criteria set forth in paragraph (2), the  
33 secretary or board may recommend to the court that the prisoner's  
34 sentence be recalled. The secretary shall submit a recommendation  
35 for release within 30 days in the case of inmates sentenced to  
36 determinate terms and, in the case of inmates sentenced to  
37 indeterminate terms, the secretary shall make a recommendation  
38 to the Board of Parole Hearings with respect to the inmates who  
39 have applied under this section. The board shall consider this  
40 information and make an independent judgment pursuant to



1 paragraph (2) and make findings related thereto before rejecting  
2 the request or making a recommendation to the court. This action  
3 shall be taken at the next lawfully noticed board meeting.

4 (7) Any recommendation for recall submitted to the court by  
5 the secretary or the Board of Parole Hearings shall include one or  
6 more medical evaluations, a postrelease plan, and findings pursuant  
7 to paragraph (2).

8 (8) If possible, the matter shall be heard before the same judge  
9 of the court who sentenced the prisoner.

10 (9) If the court grants the recall and resentencing application,  
11 the prisoner shall be released by the department within 48 hours  
12 of receipt of the court's order, unless a longer time period is agreed  
13 to by the inmate. At the time of release, the warden or the warden's  
14 representative shall ensure that the prisoner has each of the  
15 following in his or her possession: a discharge medical summary,  
16 full medical records, state identification, parole medications, and  
17 all property belonging to the prisoner. After discharge, any  
18 additional records shall be sent to the prisoner's forwarding  
19 address.

20 (10) The secretary shall issue a directive to medical and  
21 correctional staff employed by the department that details the  
22 guidelines and procedures for initiating a recall and resentencing  
23 procedure. The directive shall clearly state that any prisoner who  
24 is given a prognosis of six months or less to live is eligible for  
25 recall and resentencing consideration, and that recall and  
26 resentencing procedures shall be initiated upon that prognosis.

27 (f) Notwithstanding any other provision of this section, for  
28 purposes of paragraph (3) of subdivision (h), any allegation that  
29 a defendant is eligible for state prison due to a prior or current  
30 conviction, sentence enhancement, or because he or she is required  
31 to register as a sex offender shall not be subject to dismissal  
32 pursuant to Section 1385.

33 (g) A sentence to state prison for a determinate term for which  
34 only one term is specified, is a sentence to state prison under this  
35 section.

36 (h) (1) Except as provided in paragraph (3), a felony punishable  
37 pursuant to this subdivision where the term is not specified in the  
38 underlying offense shall be punishable by a term of imprisonment  
39 in a county jail for 16 months, or two or three years.

(2) Except as provided in paragraph (3), a felony punishable pursuant to this subdivision shall be punishable by imprisonment in a county jail for the term described in the underlying offense.

(3) Notwithstanding paragraphs (1) and (2), where the defendant (A) has a prior or current felony conviction for a serious felony described in subdivision (c) of Section 1192.7 or a prior or current conviction for a violent felony described in subdivision (c) of Section 667.5, (B) has a prior felony conviction in another jurisdiction for an offense that has all the elements of a serious felony described in subdivision (c) of Section 1192.7 or a violent felony described in subdivision (c) of Section 667.5, (C) is required to register as a sex offender pursuant to Chapter 5.5 (commencing with Section 290) of Title 9 of Part 1, or (D) is convicted of a crime and as part of the sentence an enhancement pursuant to Section 186.11 is imposed, an executed sentence for a felony punishable pursuant to this subdivision shall be served in state prison.

(4) Nothing in this subdivision shall be construed to prevent other dispositions authorized by law, including pretrial diversion, deferred entry of judgment, or an order granting probation pursuant to Section 1203.1.

(5) The court, when imposing a sentence pursuant to paragraph (1) or (2) of this subdivision, may commit the defendant to county jail as follows:

(A) For a full term in custody as determined in accordance with the applicable sentencing law.

(B) (i) For a term as determined in accordance with the applicable sentencing law, but suspend execution of a concluding portion of the term selected in the court's discretion, during which time the defendant shall be supervised by the county probation officer in accordance with the terms, conditions, and procedures generally applicable to persons placed on probation, for the remaining unserved portion of the sentence imposed by the court. The period of supervision shall be mandatory, and may not be earlier terminated except by court order. Any proceeding to revoke or modify mandatory supervision under this subparagraph shall be conducted pursuant to either subdivisions (a) and (b) of Section 1203.2 or Section 1203.3. During the period when the defendant is under such supervision, unless in actual custody related to the sentence imposed by the court, the defendant shall be entitled to only actual time credit against the term of imprisonment imposed

1 by the court. Any time period which is suspended because a person  
2 has absconded shall not be credited toward the period of  
3 supervision.

4 (ii) The portion of a defendant's sentenced term during which  
5 time he or she is supervised by the county probation officer  
6 pursuant to this subparagraph shall be known as mandatory  
7 supervision, *and shall begin upon release from custody*.

8 (6) The sentencing changes made by the act that added this  
9 subdivision shall be applied prospectively to any person sentenced  
10 on or after October 1, 2011.

11 (i) This section shall remain in effect only until January 1, 2017,  
12 and as of that date is repealed, unless a later enacted statute, that  
13 is enacted before that date, deletes or extends that date.

14 ~~SECTION 1. Section 801.3 is added to the Penal Code, to read:~~

15 ~~801.3. (a) Notwithstanding any other limitation of time~~  
16 ~~prescribed in this chapter, prosecution for any offense described~~  
17 ~~in subdivision (b) may be commenced at any time prior to the~~  
18 ~~victim's 28th birthday, or within the period and under the~~  
19 ~~circumstances described in subdivision (f) or (g) of Section 803,~~  
20 ~~if applicable, whichever occurs later.~~

21 ~~(b) This section applies to the following offenses:~~

22 ~~(1) Any violation of Section 33 by a person described in Section~~  
23 ~~32, in which the person harbors, conceals, or aids any principal to~~  
24 ~~a felony violation of Section 261, 286, 288, 288.5, 288a, or 289~~  
25 ~~in which the victim was a minor and in which the violation~~  
26 ~~involved substantial sexual conduct, as described in subdivision~~  
27 ~~(b) of Section 1203.066, excluding mutual masturbation.~~

28 ~~(2) Any violation of Section 136.1, if the victim or witness was~~  
29 ~~a victim of, or a witness to, any violation of Section 261, 286, 288,~~  
30 ~~288.5, 288a, or 289 in which the victim was a minor and in which~~  
31 ~~the violation involved substantial sexual conduct, as described in~~  
32 ~~subdivision (b) of Section 1203.066, excluding mutual~~  
33 ~~masturbation.~~

34 ~~(3) Any violation of Section 139 in which the credible threat is~~  
35 ~~against the victim of, immediate family member of the victim of,~~  
36 ~~or witness to, any violation of Section 261, 286, 288, 288.5, 288a,~~  
37 ~~or 289 in which the victim was a minor and in which the violation~~  
38 ~~involved substantial sexual conduct, as described in subdivision~~  
39 ~~(b) of Section 1203.066, excluding mutual masturbation.~~

~~(4) Any violation of Section 140 in which the force or threat to use force against a witness or victim involves a witness to, or victim of, any violation of Section 261, 286, 288, 288.5, 288a, or 289 in which the victim was a minor and in which the violation involved substantial sexual conduct, as described in subdivision (b) of Section 1203.066, excluding mutual masturbation.~~

~~(5) Any violation of Section 153 in which the crime compounded or concealed is any violation of Section 261, 286, 288, 288.5, 288a, or 289 in which the victim was a minor and in which the violation involved substantial sexual conduct, as described in subdivision (b) of Section 1203.066, excluding mutual masturbation.~~

~~(6) Any violation of Section 132 in which the book, paper, document, record, or other instrument in writing forged or fraudulently altered or antedated relates to evidence of a violation of Section 261, 286, 288, 288.5, 288a, or 289 in which the victim was a minor and in which the violation involved substantial sexual conduct, as described in subdivision (b) of Section 1203.066, excluding mutual masturbation.~~

~~(7) Any conspiracy to obstruct justice, in violation of paragraph (5) of subdivision (a) of Section 182, in which the conspiracy to obstruct justice involves obstruction of any investigation or trial for any violation of Section 261, 286, 288, 288.5, 288a, or 289 in which the victim was a minor and in which the violation involved substantial sexual conduct, as described in subdivision (b) of Section 1203.066, excluding mutual masturbation.~~

~~(c) As used in this section, "victim" means the victim of any violation of Section 261, 286, 288, 288.5, 288a, or 289 in which he or she was a minor at the time of the offense and the offense involved substantial sexual conduct, as described in Section 1203.066, excluding mutual masturbation.~~